

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LOCALS 302 AND 612 OF THE)	Case No. C11-171-JPD
INTERNATIONAL UNION OF)	
OPERATING ENGINEERS)	
CONSTRUCTION INDUSTRY HEALTH)	
AND SECURITY FUND, et al.,)	
)	ORDER GRANTING PLAINTIFFS'
Plaintiffs,)	MOTION FOR SUMMARY JUDGMENT
)	
v.)	
)	
ACE PAVING CO., INC.,)	
)	
Defendant.)	
_____)	

I. INTRODUCTION AND SUMMARY CONCLUSION

Plaintiffs, Local 302 of the International Union of Operating Engineers and three Operating Engineers trust funds, move the Court for summary judgment against defendant Ace Paving Co., Inc.¹ Dkt. 8; Dkt. 10. Specifically, plaintiffs bring this suit to recover delinquent employee trust fund contributions, union dues and Union Program ("UP") payments, and attendant amounts, which they claim defendant is bound to pay under several trust agreements and a collective bargaining agreement, the 2010-2011 Operating Engineers

¹The three trust funds are (1) the Locals 302 and 612 of the International Union of Operating Engineers-Construction Industry Health and Security Fund, (2) Locals 302 and 612 of the International Union of Operating Engineers-Construction Industry Retirement Fund, and (3) Western Washington Operating Engineers-Employers Training Trust Fund. Dkt. 8 at 1. Each trust fund is governed by its own trust agreement.

01 Local 302 Master Labor Agreement (the “CBA”). Dkt. 1. Plaintiffs make the following
02 allegations: (1) by entering into the CBA with plaintiffs, defendant agreed to the payment of
03 employee trust fund contributions and union dues and UP payments for its employees who
04 perform bargaining unit work; (2) in doing so, defendant also agreed to pay liquidated
05 damages, interest, attorney’s fees and costs for all of its unpaid contributions as set forth in
06 the trust agreements; and (3) defendant has failed to pay plaintiffs all amounts due for the
07 employment period of November 2010 through February 2011.

08 The present matter comes before the Court on plaintiffs’ motion for summary
09 judgment. Dkt. 8. Because defendant has failed to respond to this motion, it is treated as an
10 uncontested motion pursuant to Western District of Washington Local Rule CR 7(b)(2). After
11 careful consideration of the motion, governing law, and the balance of the record, the Court
12 GRANTS plaintiffs’ motion.

13 II. FACTS AND PROCEDURAL HISTORY

14 This is a contract case brought under the Employee Retirement Income Security Act
15 of 1974 (“ERISA”), 29 U.S.C. § 1132(e)(1) and (f) and under § 301(a) of the Taft-Hartley
16 Act, 29 U.S.C. §185(a). On January 31, 2011, plaintiffs filed a complaint to collect
17 delinquent contributions and union dues. Dkt. 1. The complaint alleges that defendant was
18 obligated to pay plaintiffs trust fund contributions, as well as union dues and UP payments,
19 but failed to do so for the employment period of November 2010 through February 2011. As
20 a result, plaintiffs contend that the defendant is also liable for liquidated damages, interest,
21 and reasonable attorney’s fees and costs.

22 On February 15, 2011, plaintiffs’ complaint was served upon defendant. Dkt. 3. On
23 March 4, 2011, defendant filed an answer to the complaint admitting five of the plaintiffs’
24 factual allegations, and denying the remaining six. Dkt. 5. On April 15, 2011, plaintiffs filed
25 a motion for summary judgment arguing that the facts of its bargaining agreement with
26 defendant are undisputed, and that defendant is therefore liable for all amounts sought in this

01 action. Dkt. 8. On that same day, plaintiffs supplemented their motion with a declaration
02 from Mr. Erik Thompson, the Data Controller of Welfare and Pension Administration
03 Service, Inc. (“WPAS”). Dkt. 9 (Thompson Decl.).

04 Defendant has not filed any opposition to plaintiffs’ motion for summary judgment.
05 On May 13, 2011, plaintiffs filed a reply. Dkt. 10.

06 III. JURISDICTION

07 Pursuant to 28 U.S.C. § 636(c), the parties have consented to having this matter heard
08 by the undersigned Magistrate Judge. This Court has exclusive jurisdiction over the subject
09 matter of this action pursuant to Section 502(e)(1) and (f) of ERISA, 29 U.S.C. § 1132(e)(1)
10 and (f) and under Section 301(a) of the Taft-Hartley Act, 29 U.S.C. § 185(a). Venue is proper
11 in this district under Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2), because the
12 plaintiff trusts are administered in this district.

13 IV. DISCUSSION

14 A. Federal Rule of Civil Procedure 56

15 Summary judgment “shall be entered forthwith if the pleadings, depositions, answers
16 to interrogatories, and admissions on file, together with the affidavits, if any, show that there
17 is no genuine issue as to any material fact and that the moving party is entitled to a judgment
18 as a matter of law.” Fed. R. Civ. P. 56(c). “When a motion for summary judgment is
19 properly made and supported, an opposing party may not rely merely on allegations or denials
20 in its own pleading; rather, its response must—by affidavits or as otherwise provided in this
21 rule—set out specific facts showing a genuine issue for trial. If the opposing party does not
22 so respond, summary judgment should, if appropriate, be entered against that party.” Fed. R.
23 Civ. P. 56(e)(2).

24 B. Plaintiffs’ Motion for Summary Judgment

25 Plaintiffs have filed a detailed summary judgment motion supported by admissible and
26 competent declarations and evidence establishing that defendant owes plaintiffs \$113,378.82

01 in delinquent contributions, \$7,425.33 in union dues and UP payments, \$13,605.46 in
02 liquidated damages, \$3,001.42 in interest through April 15, 2011 with additional amounts still
03 accruing until the date delinquent contributions are paid in full, and reasonable attorney's fees
04 and costs. Dkt. 9 at 9. Specifically, as outlined in plaintiffs' motion, defendant signed a
05 compliance agreement with plaintiffs that bound defendant to both the CBA and the three
06 trust agreements. Dkt. 8 at 3. As part of the CBA, defendant agreed to pay monthly
07 contributions to each of the three trust funds, union dues of 2% of eligible employees' gross
08 wages, and UP payments of \$0.30 per compensable hour. Dkt. 8 at 4-5. Additionally,
09 defendant accepted the terms of the three trust agreements, including the obligation to pay
10 12% of any total delinquent contributions as liquidated damages, interest at 12% per annum
11 until any delinquent contributions are paid in full, as well as attorney's fees and costs incurred
12 in collecting any delinquent contributions. *Id.* at 6.

13 Plaintiffs have proffered copies of the compliance agreement, CBA, and trust
14 agreements, along with a spreadsheet verifying the amount of overdue contributions,
15 liquidated damages, interest, attorney's fees, and costs incurred. *Id.*, Ex. J. Finally, plaintiffs'
16 brief is also supported by a declaration from Erik Thompson, the Data Controller of WPAS.
17 Dkt. 9 (Thompson Decl.). The Court finds that plaintiffs' submissions satisfy the burden of
18 Rule 56(c) by establishing that the nonmovant has failed to present a genuine issue as to any
19 material fact. This failure of proof "renders all other facts immaterial," and thereby entitles
20 plaintiffs to summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).
21 According to the undisputed evidence, defendant failed to pay \$113,378.82 in delinquent
22 contributions and \$7,425.33 in union dues and UP payments for the employment periods of
23 November 2010 and February 2011. Dkt. 9 at 9 (Thompson Decl.). As a result, defendant is
24 also obligated to pay \$13,605.46 in liquidated damages, \$3,001.42 in interest through April
25 15, 2011, with additional amounts accruing until the date delinquent contributions are paid in
26 full, as well as attorney's fees and costs to be determined after plaintiffs submit an attorney's

fees and costs declaration. *Id.*

C. Defendant's Failure to Reply

Defendant has failed to respond to plaintiffs' motion. Under Local Rule CR 7(b)(2), "[i]f a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit." Furthermore, by neglecting to respond to the arguments made in plaintiffs' motion, defendant has failed to meet its burden of moving beyond the pleadings to "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). As a result, plaintiffs' motion is granted.

V. CONCLUSION

For the foregoing reasons, the Court hereby ORDERS as follows:

- (1) Plaintiffs' motion for summary judgment, Dkt. 8, is GRANTED.
- (2) Judgment is awarded in favor of plaintiffs and against defendant in the following amounts for the employment periods of November 2010 through February 2011:
 - (A) \$113,378.82 for delinquent contributions;
 - (B) \$7,425.33 for union dues and UP payments;
 - (C) \$13,605.46 for liquidated damages;
 - (D) \$3,001.42 for interest through April 15, 2011 with additional amounts still accruing until the date delinquent contributions are paid in full; and
 - (E) Reasonable attorney's fees and costs.
- (3) The Clerk of Court is directed to send a copy of this order to the parties.

DATED this 31st day of May, 2011.


 JAMES P. DONOHUE
 United States Magistrate Judge